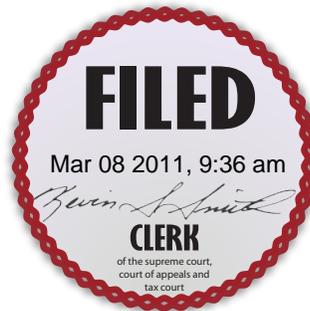


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOSEPH M. FERRY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-1006-CR-379
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable James B. Osborn, Judge  
Cause No. 49F15-0912-FD-098958

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**March 8, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## Case Summary

Joseph M. Ferry appeals his conviction for Class A misdemeanor criminal conversion. Ferry contends that the trial court committed fundamental error by admitting evidence of his juvenile adjudication for theft and that there is insufficient evidence to sustain his conviction. Concluding that the trial court's admission of Ferry's juvenile adjudication for theft does not rise to the level of fundamental error and that the evidence is sufficient to sustain Ferry's conviction, we affirm.

## Facts and Procedural History

One evening in July 2009, Ferry and Jensen Pritt were at a party at an Indianapolis apartment when they got into an argument. At some point, Pritt left her purse next to a living room chair and went into a different room with some friends. An hour or two later, she returned to the living room and discovered that someone had poured a beer into her purse and taken two wallets and a camera from it. Pritt immediately suspected Ferry "[b]ecause there had been tension that whole night between [them]." Tr. p. 24. When she asked him if he had taken belongings from her purse, Ferry said no.

The next morning, Easton Kirstein drove Ferry home. During the drive, Ferry told Kirstein that he and Pritt had argued the night before and that he had thrown her "stuff" over the balcony. *Id.* at 12. Kirstein and Pritt later looked for her wallets and camera behind the apartment along the tree line in the woods. They recovered one of her wallets about twenty-five to thirty feet from the building.

The State charged Ferry with Class D felony theft. Ind. Code § 35-43-4-2(a). Before trial, the State filed a notice of intent to introduce evidence of Ferry's 2007 juvenile adjudication for theft.

At the bench trial, Pritt, Kirstein, and Kirstein's father, who helped recover the wallet from behind the apartment, testified for the State. Ferry testified in his own defense that he did not take Pritt's belongings from her purse, throw them over the balcony, or tell Kirstein that he had done so. During cross, the State introduced a copy of Ferry's juvenile history, which included his juvenile adjudication for theft (State's Exhibit Two). Ferry stated he had no objection, and the court admitted it into evidence:

[STATE]: Judge, it's already been, eh – filed with the court, but State would move to enter State's Exhibit Two.

THE COURT: All right...

[STATE]: I had... filed it with...

[DEFENSE]: No objection.

\* \* \* \* \*

THE COURT: Show State's Two admitted without objection.

Tr. p. 53-54.

The trial court found Ferry guilty of the lesser included offense of Class A misdemeanor criminal conversion. Ind. Code § 35-43-4-3(a). In announcing its decision, the court explained why it believed Kirstein's testimony over Ferry's:

One, Mr. Ferry's true finding as – for a crime of dishonesty tends to call into question his credibility today. In addition to that, he is on trial and his liberty is at stake based upon . . . this charge – and . . . I think that also shows a certain amount of – well, it shows bias with regard to his testimony.

Tr. p. 58.

Ferry now appeals.

## Discussion and Decision

Ferry contends that the trial court committed fundamental error by admitting evidence of his juvenile adjudication for theft and that there is insufficient evidence to sustain his conviction.

### I. Admission of Evidence

Ferry first contends that the trial court erred by admitting evidence of his juvenile adjudication for theft.

Because Ferry did not object to the admission of this evidence at trial, he has waived the issue for appellate review. *See Kubsch v. State*, 784 N.E.2d 905, 923 (Ind. 2003) (“Failure to object at trial to the admission of evidence results in waiver of that issue on appeal.”). Nevertheless, he claims the admission of this evidence constitutes fundamental error. The fundamental error doctrine is an exception to the general rule that the failure to object at trial constitutes a procedural default precluding consideration of the issue on appeal. *Jewell v. State*, 887 N.E.2d 939, 940 n.1 (Ind. 2008). The fundamental error exception is extremely narrow and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process. *Mathews v. State*, 849 N.E.2d 578, 587 (Ind. 2006). The error claimed must either make a fair trial impossible or constitute clearly blatant violations of basic and elementary principles of due process. *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010), *reh’g denied*. This exception is available only in egregious circumstances. *Id.* We thus address

whether the admission of Ferry's juvenile adjudication for theft constitutes fundamental error.

Indiana Evidence Rule 609(d) indicates that a defendant's juvenile adjudications are inadmissible:

Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness *other than the accused* if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(Emphasis added). While it was clearly error for the trial court to allow the State to use Ferry's juvenile adjudication for theft to impeach him, that error does not rise to the level of fundamental error. *Cf. Goolsby v. State*, 517 N.E.2d 54, 61-62 (Ind. 1987) (permitting evidence of defendant's juvenile adjudications for robbery, burglary, and theft for impeachment purposes was harmless error).

Ferry states in his brief, "If there had been any corroborating evidence that Ferry had thrown Ms. Pritt's property over the balcony, this would be a different case and the admission of Ferry's juvenile theft adjudication would probably not rise to the level of fundamental error." Appellant's Br. p. 7. Here, there was such corroborating evidence: (1) Ferry and Pritt had an argument at the party and there was tension between them the whole night, (2) Ferry was at the apartment at the time Pritt's belongings were taken, (3) Ferry admitted to Kirstein that he threw Pritt's "stuff" over the balcony, and (4) Pritt's wallet was found behind the apartment about twenty-five to thirty feet from the building.

Further, although the trial court considered the juvenile adjudication for theft, the court also questioned Ferry's credibility because his testimony was self-serving. *See Ind.*

Evidence Rule 616 (“For the purpose of attacking the credibility of a witness, evidence of bias, prejudice, or interest of the witness for or against any party to the case is admissible.”). Thus, the trial court’s credibility determination was not based solely on the juvenile adjudication for theft.

In light of the corroborating evidence and the trial court’s finding that Ferry’s testimony was self-serving, we conclude that the admission of his juvenile adjudication for theft does not rise to the level of fundamental error.

## **II. Sufficiency of the Evidence**

Ferry next contends that the evidence is insufficient to support his conviction.

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this Court does not reweigh the evidence or judge the credibility of the witnesses. *Bond v. State*, 925 N.E.2d 773, 781 (Ind. Ct. App. 2010), *reh’g denied, trans. denied*. We consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom and affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* A conviction may be based upon circumstantial evidence alone. *Id.* Reversal is appropriate only when reasonable people would not be able to form inferences as to each material element of the offense. *Id.*

In order to convict Ferry of Class A misdemeanor criminal conversion, the State had to prove that Ferry knowingly or intentionally exerted unauthorized control over Pritt’s wallets, money, or camera. I.C. § 35-43-4-3(a); Appellant’s App. p. 16 (charging

information alleging theft of Pritt's "2 wallets and/or United States Currency and/or a camera").

The evidence most favorable to judgment shows that Ferry and Pritt argued at the party, Pritt discovered that her wallets and camera were missing from her purse, Ferry told Kirstein that he threw Pritt's "stuff" over the balcony, and Pritt's wallet was found behind the apartment.

Despite this clear evidence, Ferry argues that the evidence that he threw Pritt's "stuff" over the balcony does not show that Ferry exerted any control over Pritt's wallets, money, or camera. We disagree. Pritt's wallets and camera were missing and one of her wallets was found behind the apartment. This evidence is sufficient to raise a reasonable inference that the "stuff" Ferry threw over the balcony was Pritt's wallets, money, or camera.

The evidence is thus sufficient to sustain Ferry's criminal conversion conviction.

Affirmed.

BAKER, J., and BARNES, J., concur.